

### **REMARKS**

Claims 1-15 and 28-31 are pending in the application, claims 16-27 being cancelled by this Amendment. By this amendment, claims 1, 8 and 15 have been amended and new claims 28-31 have been added. Reconsideration of the previously rejected claims and favorable action is requested in light of the above amendments and the following remarks.

The Office Action rejects claims 1-15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,692,497 to Schnitzer et al. (hereafter "Schnitzer") in view of U.S. Patent No. 5,046,491 to Derrick et al. (hereafter "Derrick"). Insofar as these grounds for rejection apply to the present claims, Applicant respectfully traverses.

#### **Schnitzer in view of Derrick**

The Office Action rejects claim 1 as obvious over Schnitzer in view of Derrick.

As described in the Abstract, Schnitzer relates to a microprocessor-controlled ventilator that controls a patient's breathing selectively. The microprocessor connects to a pneumatic subsystem which includes a variety of sensors and actuators and the catheter disposed in the patient's trachea. A feedback control loop provides a basis for controlling selected actuators within the subsystem to control the patient's breathing.

Derrick, as described in the Abstract, relates to an apparatus and method for selective, separate or simultaneous collection and analysis of nasal gases and oral gases, and mixtures thereof, respired by a patient, with optional simultaneous delivery to the patient of selected inhalant gases. The apparatus comprises a nasal gas cannula and an oral gas capture member constructed and arranged to avoid or minimize contact with the patient's mouth and other facial surfaces.

To establish a prima facie case of obviousness, three criteria must be met. First, there must be some reason to modify the reference or to combine the reference teachings. Second, there must be some expectation of success. Third, the prior art references must disclose or suggest all of the claimed features. See MPEP 2143 and the May 3, 2007 letter from the PTO Deputy Commissioner for Patent Operations regarding *KSR Int'l Co. v. Teleflex, Inc.* Applicant respectfully submits that these criteria have not been met for Schnitzer in view of Derrick as applied to claims 1-15 of the present invention.

For example, claim 1 of the present invention recites, in part, “A respiratory monitoring system comprising: a patient interface comprising a nasal cannula and a visual display, said nasal cannula comprising at least a first nasal capnography port and a first pressure sensor port and said visual display comprising indicators, wherein said visual display is adapted to be positioned at a suitable location on the body of a patient such that said indicators are visible to a user while simultaneously observing the patient....” Schnitzer fails to disclose a visual display that can be positioned at any suitable location on the body of a patient such that said indicators are visible to a user while simultaneously observing the patient. The elements of Schnitzer relied upon in the rejection discloses a monitor associated with a CPU and/or an LED associated with a ventilator. Schnitzer does not teach or suggest that either of these devices are adapted to be positioned on the body of a patient, as claimed in claim 1. Derrick fails to supply the deficiency of Schnitzer because Derrick neither teaches or suggests use of a particular visual display; nor does Derrick provide any motivation to combine a maskless oro-nasal device with a visual display. Thus, Applicant respectfully submits that Schnitzer and Derrick, alone or in combination, fail to teach or suggest all the elements of claim 1.

Claims 2-15 depend directly or indirectly from claim 1 and are thus distinguishable over the cited references for at least the reasons discussed above. Additionally, claim 8 recites, “The system of claim 4, wherein said indicators comprise at least one series of light emitting diodes (LEDs) such that specific LEDs provide semi-quantitative respiratory information corresponding to said predetermined thresholds for said one of respiratory effort and effect.” Support for claim 8 may be found, for example, in paragraphs 0025 and 0032 of the as-filed application. Schnitzer discloses an LED associated with a ventilator to indicate if a data variable under ventilator control exceeds a specified value. However, Schnitzer fails to teach or suggest use of a series of LEDs to provide semi-quantitative respiratory information. Derrick fails to supply the deficiency of Schnitzer because Derrick neither teaches or suggests use of any particular visual display. Claims 9-11 depend from claim 8. Thus, in addition to the reasons cited above with respect to claim 1, Applicant submits that Schnitzer and Derrick, alone or in combination, fail to teach or suggest all the elements of claims 8-11.

Also, claim 13 recites, “The system of claim 1, further comprising an ear mount adapted for placement on at least one ear of a patient, said visual display adapted for mounting on said

ear mount.” As noted above with respect to claim 1, Schnitzer and Derrick fail to disclose a visual display that can be positioned at any suitable location on the body. While Office Action relies on to Derrick to supply the feature of an ear mount, neither Derrick nor Schnitzer teach or suggest the use of a visual display that could be mounted on an ear mount. Claim 14 depends from claim 8. Thus, in addition to the reasons cited above with respect to claim 1, Applicant submits that Schnitzer and Derrick, alone or in combination, fail to teach or suggest all the elements of claims 13 and 14.

Thus, withdrawal of the rejection of claims 1-15 under 35 U.S.C. § 103(a) is respectfully requested.

New claims 28 through 31 provide varied language for the subject matter of the previously presented claims and include distinguishing features—such as, for example, the visual display—that will similarly distinguish these claims over the prior art. Examination on the merits is respectfully requested.

**Conclusion**

In view of the foregoing, the Applicant respectfully requests that the Examiner enter the above-noted amendments before the application is examined upon the merits, and that the above remarks be fully considered in conjunction therewith. Timely allowance of all currently pending claims and the issuance of a Notice of Allowance are requested.


Applicant has filed this Response and Amendment without increasing the number of claims above the number previously submitted or paid for. Accordingly, no additional claims fees are believed to be due at the present time. If such fees or any other fees associated with the filing of this paper are due at this time, please charge the fees to our Deposit Account No. 50-1349. Also, please credit any overpayments to Deposit Account No. 50-1349.

The Examiner is invited to contact Applicant's undersigned representative via telephone if such would expedite prosecution of this application toward allowance.

Respectfully submitted,

Dated: May 22, 2007

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